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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-198702

DATE: October 9, 1980

MATTER OF: H. Esmaili & Associates, Inc.

DIGEST:

1. Procuring agency is not bound by point scores in selecting offeror for award, but technical scores are useful guides for intelligent decision making.
2. Determination that given point spread indicates that one proposal is technically superior to another is matter of agency discretion which will not be disturbed where, as here, protester has offered no support for its position that proposals are technically equal.
3. Selection decision based in part on technical superiority of awardee will not be disturbed even though RFP fails to clearly indicate relative importance of price to technical factors, since protester does not argue that it was misled as to role of price and logically could have viewed price, listed after various weighted technical factors, as relatively unimportant as agency intended.

H. Esmaili & Associates, Inc. (HEA) protests the award of a contract to Soil & Land Use Technology, Inc., (Soil) under request for proposals (RFP) No. R5-NCZ-80-9 issued by the United States Department of Agriculture, Forest Service, Placerville, California. The RFP solicited proposals for a soil resources inventory in Stanislaus National Forest.

[Protest Against Proposal Evaluation]

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The Forest Service evaluated the seven proposals received in accordance with the following criteria listed in the RFP:

"CRITERIA FOR EVALUATION OF TECHNICAL PROPOSALS

1. Qualification and experience 40 points
2. Methodology and schedule 40 points
3. Related specialized experience 15 points
4. Understanding Forest Service situation and needs 5 points

"Technical proposals will be evaluated by a Board of Contract Awards, who will not have access to the price proposals. After evaluation of the technical proposals is completed, the price proposals will be evaluated for those proposals meeting the minimum technical requirements. Proposals remaining within a competitive range will be considered for award.

"Award of the contract will be made to the offeror whose offer is the most advantageous to the Government, price and other factors considered, and may be made without further negotiation. The proposal should be submitted initially on the most favorable terms which the offeror can submit to the Government. However, the Government reserves the right to conduct further oral or written discussions, as appropriate with those offerors within a competitive range."

The technical ranking and price offered by the three firms with highest technical scores were:

<u>Name of Firm</u>	<u>Technical Score</u>	<u>Price</u>
Soil and Land Use Technology, Inc.	83	\$69,994
Western Ecological Services Co.	78	72,954
H. Esmaili & Associates, Inc.	77	62,681

The award was made to Soil as the highest technically rated offeror on the basis of its initial proposal. No discussions were held with any offeror either on cost or technical matters.

HEA contends that as the technical scores of the three highest rated proposals were so close those proposals were technically equal and according to the evaluation criteria award should have been made to HEA because it offered the lowest price. In support of its position, HEA argues that the numerical scores received in the technical evaluation should have been used as a general guide rather than the absolute determinant of which firm received the award. HEA notes in this respect that its score was an average of three scores, two of which were equal to that of the highest rated proposal, while the other score was 22 percent lower. This illustrates, in HEA's view, that "allowance should be made for a margin of error in the technical review process."

It is precisely because point scores are often the composite result of disparate judgments of technical evaluators that we have held that point ratings, while useful as guides for intelligent decision making, should not in every case determine the outcome of the evaluation. Bunker Ramo Corp., 56 Comp. Gen. 712, 716 (1977), 77-1 CPD 427; Wheeler Industries, Inc., B-193883, July 20, 1979, 79-2 CPD 41. Whether a given point spread between competing proposals indicates a significant superiority of one over another is a matter primarily within the discretion of the contracting agency. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. In this case, while HEA may believe that its score of 77 is substantially equal to Soil's score of 83, the agency does not and the protester has offered no support for its position that its proposal is technically equal to that submitted by Soil.

Here, the record indicates simply that the Board of Contract Awards considered the technical evaluation conducted by a technical evaluation team, then reviewed cost proposals, and recommended award to Soil. The contracting officer accepted the recommendation. This selection decision reflects the agency's judgment that Soil's high technical score indicates a technical superiority which is worth the extra cost associated

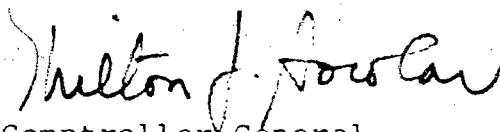
with the Soil proposal. We have held in cases such as this that although it is often desirable to hold discussions, an agency may make award on an initial proposal basis to a higher-priced offeror. Decision Sciences Corporation, B-196100, May 23, 1980, 80-1 CPD 357. Thus, this technical cost trade-off is a typical discretionary act which agency evaluators and selecting officials must often make in competitive negotiated procurements. See Grey Advertising, Inc., supra, and cases cited therein. We will not object to such judgments unless there is no rational basis for it or it is inconsistent with the evaluation criteria. Grey Advertising, Inc., supra.

We find nothing in the record on which to base a finding that the agency did not have a rational basis for its selection decision. With respect to the evaluation criteria, we note that the role of price in the award selection was not clearly delineated. We have frequently stated that a reference to "price and other factors" without more does not inform offerors of the relative importance of price in relation to technical factors. A.R.&S. Enterprises, Inc., B-196518, March 12, 1980, 80-1 CPD 193. This language merely establishes that the agency cannot totally disregard price, 50 Comp. Gen. 110 (1970), and that price alone is not determinative since the reference to other factors includes consideration of the technical acceptability of proposals. Southern Methodist University, B-187737, April 27, 1977, 77-1 CPD 289. Offerors are entitled to know, however, whether a procurement is intended to achieve a minimum standard at the lowest cost or whether cost is secondary to quality. Signatron, Inc., 54 Comp. Gen. 530 (1974), 74-2 CPD 386.

We have stated that when nothing specifically indicates the relative importance of price, but it is listed subsequent to the point-scored technical factors, offerors might reasonably conclude that price was not to be controlling as between technically acceptable proposals and that technical superiority would be considered. See A.R.&S. Enterprises, Inc., supra. On the other hand, in this case the RFP evaluation language could be construed to mean that award would be made to the lowest priced offeror submitting an acceptable technical proposal. The protester, however, does not allege that it was misled by the criteria into sacrificing the technical

portion of its proposal in order to offer a low price; it apparently read the RFP as the agency intended, and protests only because it believes its evaluated proposal should have been viewed as technically equal to the awardee's. Thus, while the solicitation was deficient, we cannot conclude from this record that the protester was prejudiced. Accordingly, the protest is denied.

The Acting Director of Administrative Services for the Forest Service has stated that field offices have been instructed to include price as a weighted factor in future solicitations of this type.



For the Comptroller General
of the United States